

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5101 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PRAVINKUMAR MOHANLAL PATEL

Versus

GUJARAT MARKETING COOP SOCIETY

Appearance:

1. Special Civil Application No. 5101 of 2002
MR YN RAVANI for Petitioner No. 1
MR GM JOSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/08/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has challenged the judgment and award of the Labour Court dated 2nd May, 2001 in Reference [L.C.A.] No. 523 of

1990 whereby the Labour Court has rejected the Reference filed by the petitioner.

2.0. The short facts of the case as they emerge from the record of the petition are that the petitioner at the relevant time was working as driver with the respondent on a monthly salary of Rs.350=00 per month. His appointment was made on several conditions, namely that since there are various branches and officer of the respondent, he may be posted anywhere in the State. It is the case of the petitioner that vide order dated 29th January, 1981, his service was terminated on the ground that his service was not required then. It is the say of the petitioner that being aggrieved by the order of the termination, he made representation to the respondent, but the respondent did not reinstate him and other similarly situated persons were employed as drivers in the respondent.

2.1. In view of that the petitioner raised industrial dispute, which was ultimately referred to the Labour Court for adjudication being Reference No. [L.C.A.] No. 523 of 1990. Before the Labour Court both the parties adduced evidence and after appreciating the material produced before it, the Labour Court rejected the Reference filed by the petitioner. It is this award which is now under challenge in this petition.

3.0. I have heard the learned advocate for the respective parties and have perused the relevant record. It appears that the Labour Court has not committed any illegality inasmuch as the petitioner was appointed for a particular period and on non availability of work, his service was discontinued. The Labour Court has further observed that since the petitioner has not worked for more than a year, granting reinstatement is out of question. Thus, the award of the Labour Court on that point is required to be confirmed.

3.1. Further, Mr. Ravani learned advocate appearing for the petitioner submitted that the respondent has employed some other similarly situated persons subsequently i.e. after retrenchment of the petitioner either at Ahmedabad or at some other branches of the respondent. He submitted that the Labour Court can examine the same after allowing both the parties to adduce evidence on record.

4.0. Thus, looking to the peculiar facts and circumstances of the case, a consensus has been arrived at between the parties to remand the matter to the Labour

Court for the aforesaid purpose.

4.1. In view of the above, the petition is partly allowed. The judgment and award dated 2nd May, 2001 in Reference [L.C.A.] No. 523 of 1990 is modified to the extent that the award with regard to non granting reinstatement is confirmed.

4,2, The matter is remanded to the Labour Court for limited purpose i.e. for considering whether there is breach of provisions of Section 25-G and Section 25-H of the Industrial Disputes Act and whether other similarly situated persons are appointed in place of the petitioner. The petitioner shall make an application within a period of four weeks from the date of receipt of this order before the Labour Court, only for considering the aforesaid aspects. As and when such application is made, the Labour Court shall consider the matter as indicated above, after allowing the parties to adduce evidence and decide the same within a period of four months from the date of the receipt of the application.

5.0. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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